



REPUBLIC OF KENYA



KENYA LAW
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**Nyaga v Embu County Government (Miscellaneous Civil Application
E001 of 2021) [2024] KEHC 8683 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CIVIL APPLICATION E001 OF 2021**

LM NJUGUNA, J

JULY 18, 2024

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF THE EMBU CIVIL SUIT NO. 136 OF 2014

BETWEEN

JOSEPH MURITHI NYAGA APPLICANT

AND

EMBU COUNTY GOVERNMENT RESPONDENT

RULING

1. Pursuant to leave granted on 17th July 2023, the applicant filed a Notice of Motion dated 17th July 2023 seeking the following orders:
 - a. That the honourable court be pleased to issue an order of *mandamus* to compel the respondent to comply with the judgment and decree issued on 20th April 2018 by the Embu Chief Magistrates Court in Case No. 136 of 2014; and
 - b. That costs of this application be provided for.
2. It is the applicant's case that he is the decree-holder in the named case and a certificate of costs was issued to him therein. That the respondent has since refused to satisfy the decree as obligated under section 21 of the *Government Proceedings Act* and Section 1A(3) of the *Civil Procedure Act*. He urged the court to grant the order of *mandamus* compelling the respondent to satisfy the decree, in the interest of justice.
3. The application is opposed through grounds of opposition in which the respondent stated that the application was filed outside the 21 days period required by the law and filing fees was not paid on time. That leave may only be granted once the court confirms that the application was filed within the required period and that fees was paid on time, given that leave was granted on 04th July 2022. It stated



that it is not refusing to make the payment but rather, the delay is due to budgetary constraints. It urged the court to dismiss the application.

4. The court directed that the application be canvassed by way of written submissions but none of the parties complied.
5. The issue for determination is whether the order sought may be granted.
6. In Embu Chief Magistrates Court Case No.136 of 2014, the court issued a decree dated 20th April 2018 awarding costs of the suit to the applicant. The court also issued a certificate of costs dated 24th April 2018 which stated that the applicant's bill of costs was taxed at Kshs.94,415/=. Another certificate of costs is dated 08th August 2019 and it indicates that the costs of the application dated 06th July 2018 was assessed at Kshs.17,880/=. It is the applicant's argument that the costs remain unpaid to date, necessitating this application.
7. In response to the application, the respondent stated that it was filed (and paid for) outside the required 21 days following granting of leave. The respondent also stated that the application was filed without compliance to the required timeline since leave was granted on 04th July 2022. Having perused the proceedings in this matter, the court notes that the respondent's sentiments are inaccurate since leave was granted on 04th July 2023 and the substantive application for judicial review was filed on 17th July 2023. The receipt for the filing fees indicates that the application was paid for on the same date. Therefore, the respondent's contention does not hold water.
8. The circumstances under which judicial review order of *mandamus* are issued were discussed in the case [*Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others*](#) Civil Appeal No 234 of 1996, where the Court of Appeal cited with approval, [*Halsbury's Law of England*](#), 4th Edition. Vol. 7 p. 111 para 89 thus:

“The order of *mandamus* is of most extensive remedial nature and is in form, of a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual...These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

9. For the applicant to be successful in his claim herein, it is important that he complies with the provisions of Section 21 of [*Government Proceedings Act*](#) which provides:

“(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be



taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.”

10. Section 21 (3) of the said Act on the other hand provides:

“If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.”

11. This provision opens the door for the applicant to pursue an order of mandamus otherwise he may never see the fruits of his decree. Such were the sentiments of the court in the case of Republic v The Attorney General & Another ex parte James Alfred Koroso (2013) eKLR where it held as follows;

“...in the present case the *ex parte* applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from *mandamus*, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby-sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers.”

12. In the upshot, I find that the application has merit and it is hereby allowed as prayed.

13. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF JULY, 2024.

L. NJUGUNA

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JUDGE

